45 Minn. 463; *Atkinson v. Chicago Ry. Co.*, 93 Wis. 362; *Fowler v. Middlesex*, 88 Mass. 92. The rule is the contrary, however, where the witness testifies as to the price at which he offered the property for sale. *City of Findlay v. Pertz*, 74 Fed. 681; *Grand Rapids v. Widdicomb*, 92 Mich. 92. The same result is reached where there is evidence of the price put on a commodity by an agent appointed to sell it. *Banks v. Gidrot*, 19 Ga. 421. Many cases, however, are opposed to the ruling of the principal case. *Curran v. McGrath*, 67 Ill. App. 566; *Faust v. Hosford*, 119 Ia. 97. The theory on which the evidence is excluded is that it is so open to suspicion and inviting to fraud, that it is inadmissible. *Perkins v. People*, 27 Mich. 386. Undoubtedly such defects could be brought out on cross examination and on principle it would seem as though the testimony should be admitted, particularly since the market price of land may be proved by the opinions, based in part on hearsay, of witnesses.

J. C.

LANDLORD AND TENANT—INJURY TO TENANT—DUTY OF LANDLORD.—SHEA V. MCEVOY, 107 N. E. (MASS.) 945.—*Held*, where a landlord furnishes a dumb-waiter for the use of tenants in common, he is bound to keep it in as good repair for the benefit of the tenants as it was when their tenancy began.

There is no duty upon a landlord to make repairs on the leased premises, in the absence of a covenant to do so. *Logan v. Langan*, 145 Ky. 599; *Soucy v. Louis Obert Brewing Co.*, 180 Ill. App. 69. But this general rule is modified in most jurisdictions so that where, as in the principal case, the premises are rented to a number of tenants, the landlord is bound to keep in repair that portion of the premises which is used by all the tenants, such as stairs, hallway, elevators, etc., and which he is said to have kept under his control. *Trego v. Rubovits*, 178 Ill. App. 127; *Wilcox v. Zane*, 167 Mass. 302; *Dollard v. Roberts*, 130 N. Y. 269; *McGinley v. Alliance Trust Co.*, 168 Mo. 257. But the landlord must have actual or constructive notice of the defect. *Brooks v. Schlernitzauer*, 113 N. Y. Supp. 484. In Minnesota the landlord was held not bound to repair a common roof except to prevent its becoming a nuisance. *Kruger v. Ferrant*, 29 Minn. 385. Where a stairway in a tenement house, occupied by several tenants, is rendered unsafe by merely temporary causes such as snow and ice, in some states the landlord is not liable to a tenant using it with knowledge of the defect. *Purcell v. English*, 86 Ind. 34. A landlord is not liable for an injury from a defect in premises in common use of tenants, and under his control, where the defect existed and was patent at the time of letting. *Dowling v. Nuebling*, 97 Wis. 350; *Freeman v. Hunnewell*, 163 Mass. 210. But he is liable even though the defect was not obvious, if it existed at the time of letting. *Andrews v. Williamson*, 193 Mass. 92. The principal case seems correct.

S. H. S.

NEGLIGENCE—INJURIES TO CHILDREN—DANGEROUS PREMISES.—CHESKO ET AL. V. DELAWARE & HUDSON CO., 218 Fed. 804.—*Held*, that where a boy six years old wandered from the street into the defendant's machine shop through an open, unguarded gateway he was too young to be a trespasser and the defendant owed him a duty of care.

It is a rule of the common law that the owner of property is liable for the negligent use of it as to all who are lawfully on the premises but not as to those who are there without right or without permission. The rule is usually expressed by saying that there is no affirmative duty to exercise care toward a trespasser—the owner of the property must only refrain from wilful injury. *Baker v. Byrne,* 58 Barb. 438; *Elliott v. Carlson,* 54 Ill. App. 470; *Rooney v. Woolworth,* 74 Conn. 720. But there are decisions which except from the general rule all cases where children are injured by reason of the maintenance on private property of "an attractive nuisance"—that is, one which from its nature, location, and inherent dangerous character is likely to attract and injure irresponsible children. It started and has had its most frequent application in the case of railroad turntables. *Sioux City and P. R. Co. v. Stout,* 17 Wall, 657; *Chicago etc. R. Co. v. Fox,* 38 Ind. App. 268; *Barrett v. So. Pacific Co.,* 91 Cal. 296. These cases proceed on one of three theories:—that a child of tender years can not be a trespasser, that the attraction amounts to an invitation, or that as to such a child the attraction is a wilfully concealed danger. All of these grounds have been entirely repudiated in some jurisdictions. *Delaware, L. & W. R. Co. v. Reich,* 61 N. J. L. 635; *Frost v. Eastern R. Co.,* 64 N. H. 220; *Daniels v. N. Y. & N. E. R. Co.,* 154 Mass. 349; *Wilmot v. McPadden,* 79 Conn. 367. These cases hold that temptation is not such invitation as will excuse a trespass and that the duty of protecting children is on their parents and not on the owners of property. The majority rule would seem to favor the attractive nuisance doctrine in all cases of machinery or devices which would tend to attract children, though generally restricted to cases of ponds, holes, cisterns or structures like barns or railroad stations. The doctrine never applies where the owner of the property could not carry on his lawful business in the necessary and ordinary manner and at the same time take precautions against trespassing children. *Chicago etc. R. Co. v. Fox, supra.* In the principal case the age of the child, the dangerous character of the machinery, and its location only a few feet from a much-traveled street bring it well within a conservative application of the attractive nuisance doctrine.

V. L. K.

NEGLIGENCE—LEGAL CAUSE—SPREADING FIRES.—DAVIES ET AL. V. DEL. L. & W. RY. CO., 109 N. E. (N. Y.) 95.—*Held,* that although a railroad can not be held for a loss caused to one proprietor communicated by way of the premises of another, it is liable in the case of a fire spreading from one building to another on the premises of a single proprietor.

By the established rule of New York, recovery for loss from the spread of fire is limited to the premises adjacent to those of the defendant. *Ryan v. Ry. Co.,* 35 N. Y. 210; *Van Inwegen v. Ry. Co.,* 165 N. Y. 625. Accord, *Ry. Co. v. Kerr,* 62 Pa. 353. Other authorities are agreed only to the extent of repudiating this arbitrary limitation. *Ry. Co. v. Barker,* 94 Ky. 71; *Ry. Co. v. Gantt,* 39 Md. 115; *Johnson v. Ry. Co.,* 31 Minn. 57. The judicial language in some instances points to an unlimited liability, whatever the duration and extent of the conflagration, in the absence of an extraordinary, active, intervening agency. See *Ry. Co. v. Stamford,* 12 Kan. 354; *Ry. Co. v. Wilbach,* 113 S. W. (Tex. Civ. App. 1908) 318. According to other opinions, however, the intervening cause may be merely negative, such as an extraordinary failure, whether culpable